

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION, COLUMBUS

GARY BERNER,  
1004 Delaware St.  
Washington Court House,  
OH 43160

Plaintiff

vs.

DD&D TRUCKING, LLC,  
831 Acorn Dr  
Rustburg, VA 24588

and

Kimberly Graybeal  
469 Hutton. Br  
Marion, VA 24354

and

Ohio Department of Medicaid  
Robert Byrne  
30 E. Broad St, 14<sup>th</sup> Floor  
Columbus, OH 43215-3130

Defendants

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:  
: Case No.:  
:  
: JUDGE:  
:  
: NOTICE OF REMOVAL  
:  
: JURY TRIAL DEMANDED  
:

Defendant DD & D Trucking, LLC, by and through counsel, and pursuant to 28 U.S.C  
§1332, 1441(a) and 1446, gives notice of the removal of this cause of action from Fayette  
County Court of Common Pleas to the United States District Court for the Southern District of  
Ohio, Eastern Division, and states as follows:

1. On October 17, 2022, Plaintiff Gary Berner, commenced this action in Fayette County, Ohio as Case No: CVH 2022 0379. (the “state court action”)

2. Defendant DD & D Trucking, LLC was served with a Summons and Complaint in the state court on October 22, 2022, Defendant Kimberly Graybeal was served with a Summons and Complaint in state court on October 25, 2022. Pursuant to 28 U.S.C § 1446 (a), a true and accurate copy of the Summons and Complaint served upon Defendants DD & D Trucking, LLC and Kimberly Graybeal are attached as Exhibit A.

3. On November 11, 2022, DD&D Trucking, LLC, and Kimberly Graybeal filed an Answer to Complaint in the state action. A true and accurate copy of Defendant DD& D Trucking, LLC, and Kimberly Graybeal’ s Answer is attached at Exhibit B.

4. At the time of Plaintiff’s commencement of this action, Plaintiff was a citizen of the State of Ohio.

5. Defendant, DD&D Trucking, LLC, is an entity doing business in the State of Virginia. The members of DD&D Trucking, LLC are citizens of the State of Virginia.

6. Defendant Kimberly Graybeal, was an employee of DD&D Trucking, LLC and is a citizen of the State of Virginia.

7. Thus, as between Plaintiff and the Defendants, the controversy is wholly between citizens of different states.

8. The amount in controversy exceeds \$75,000, exclusive of interests and costs, due to the seriousness of the Plaintiff alleged injuries and damages. Furthermore, it is believed that Plaintiff will make a settlement demand in the six figures.

9. The United States District Court, pursuant to the provisions of 28 U.S.C. §1332, has jurisdiction over this action because there is complete diversity, and, upon information and belief, the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

10. After filing this Notice, Defendant, DD & D Trucking, LLC, will, pursuant to 28 U.S.C. §1446(d), promptly give written notice to Plaintiff and will file a copy of this Notice with the Court of Common Pleas, Fayette County, Ohio.

11. Counsel for the Defendant, Ohio Department of Medicaid has been consulted regarding the removal of this matter and consents to its removal.

WHEREFORE, Defendant DD&D Trucking, LLC, provides notice that this action is removed to the United States District Court for the Southern District of Ohio, Eastern Division pursuant to 28 U.S.C. § 1441 and 1446, and that the Common Pleas Court of Fayette County, Ohio shall proceed no further unless this case is remanded.

Respectfully Submitted,

/s/Timothy McKay  
Timothy McKay 0040860  
Counsel for Defendant DD&D  
Trucking, LLC, and Kimberly  
Graybeal  
Travelers Staff Counsel Ohio  
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CERTIFICATE OF SERVICE

The undersigned certifies a true and accurate copy of the foregoing Defendant's Notice of Removal has been served by regular US Mail on counsel or parties of record as follows this 14th day of November 2022 :

**Joel A. Buckley**

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Counsel for Defendant

The Ohio Department of Medicaid

/s/Timothy McKay

Timothy McKay 0040860